



**US Army Corps
of Engineers®**

Nashville District

Public Notice

Public Notice No. **07-44**

Date: **May 10, 2007**

Application No. **2006-02131**

Expires: **June 10, 2007**

Please address all comments to:

Nashville District Corps of Engineers, Regulatory Branch

(Attn: David Baldrige)

3701 Bell Road, Nashville, TN 37214

JOINT PUBLIC NOTICE

US ARMY CORPS OF ENGINEERS

AND

COMMONWEALTH OF KENTUCKY

SUBJECT: Proposed Discharge of Fill Material Associated with Coal Mining in Letcher County, Kentucky - Kentucky Department for Natural Resources (KDNR) #867-9004 Amendment No. 1

TO ALL CONCERNED: The application described below has been submitted for a Department of the Army Permit pursuant to **Section 404 of the Clean Water Act** (CWA) (33 U.S.C 1344). Before a permit can be issued, certification must be provided by the Commonwealth of Kentucky, Division of Natural Resources (KDNR), pursuant to Section 401(a)(1) of the CWA, that applicable water quality standards would not be violated. By copy of this notice, the applicant hereby applies for the required certification.

APPLICANT: **Cumberland River Coal Company
P.O. Drawer 109
Appalachia, VA 24216**

LOCATION: The proposed permit area is located approximately 1.5 Miles southwest of Oven Fork and 0.2 miles southeast of Poor Fork of the Cumberland River in Letcher County, Kentucky. The site is on the Whitesburg, KY 7.5 Minute Quadrangle. Latitude N37°2'51.20", Longitude W82°49'3.17".

DESCRIPTION: Cumberland River Coal Company, (CRCC), has applied to the KDNR for a Surface Mining Control and Reclamation Act (SMCRA) permit amendment to conduct coal mining activities at the above location. The KDNR permit area encompasses 400.76 acres of which 267.89 acres are surface impacts. In order to facilitate the mining operation, CRCC has applied to this office for an individual DA permit to permanently relocate approximately 3,453 linear feet of Brown Branch. Prior to the relocation, an existing

impoundment along the upper reach of Brown Branch would be drained.

The total length of proposed impacts to Brown Branch for this project is approximately 3,453 linear feet. The total length of proposed stream channel mitigation is 4,174 linear feet. Riparian vegetation would be planted fifty feet from the centerline of the stream along the back-filled side of the constructed stream channel while the other side would already have established riparian vegetation due to re-location. The applicant applied the Eastern Kentucky Stream Assessment Protocol to the project to quantify the anticipated impacts and the proposed mitigation effort.

General plans of the proposed work and mitigation are attached to this notice. The permit decision will be based on an evaluation of the probable impacts including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the work must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b)(1) of the CWA (40 CFR Part 230). A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act

(NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. An Environmental Assessment will be prepared by this office prior to a final decision concerning issuance or denial of the requested Department of the Army Permit.

The National Register of Historic Places has been consulted and no properties listed in or eligible for the National Register are known which would be affected by the proposed work. This review constitutes the full extent of cultural resources investigations unless comment to this notice is received documenting that significant sites or properties exist which may be affected by this work, or that adequately documents that a potential exists for the location of significant sites or properties within the permit area. A copy of this notice is being sent to the office of the state historic preservation officer.

Based on available information, the proposed work would not destroy or endanger any federally listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act. Therefore, initiation of formal consultation procedures with the US Fish and Wildlife Service (USFWS) is not planned at this time. A copy of this notice is being furnished to the USFWS. The USFWS is requested to review the project as currently proposed and comment concerning any likely effect to any threatened or endangered species or their critical habitat.

Other federal, state, and/or local approvals required for the proposed work are as follows:

- a. Water quality certification from the KDNR in accordance with Section 401(a)(1) of the CWA.
- b. A Surface Mining and Reclamation Act (SMCRA) permit from the KDNR

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Written statements received in this office on or before June 11, 2007 will become a part of the record and will be considered in the determination. Any response to this notice should be directed to the Regulatory Branch, Attention: David Baldridge, at the above address, telephone (615) 369-7521.

If you received this notice by mail and wish to view all of the diagrams, visit our web site at:

<http://www.lrn.usace.army.mil/cof/notices.htm>, or contact Mr. Baldrige at the above address or phone number.

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Oven Fork

Franks

Approximate Upper Reach Limit

Approximate Lower Reach Limit

RIVER

Cem

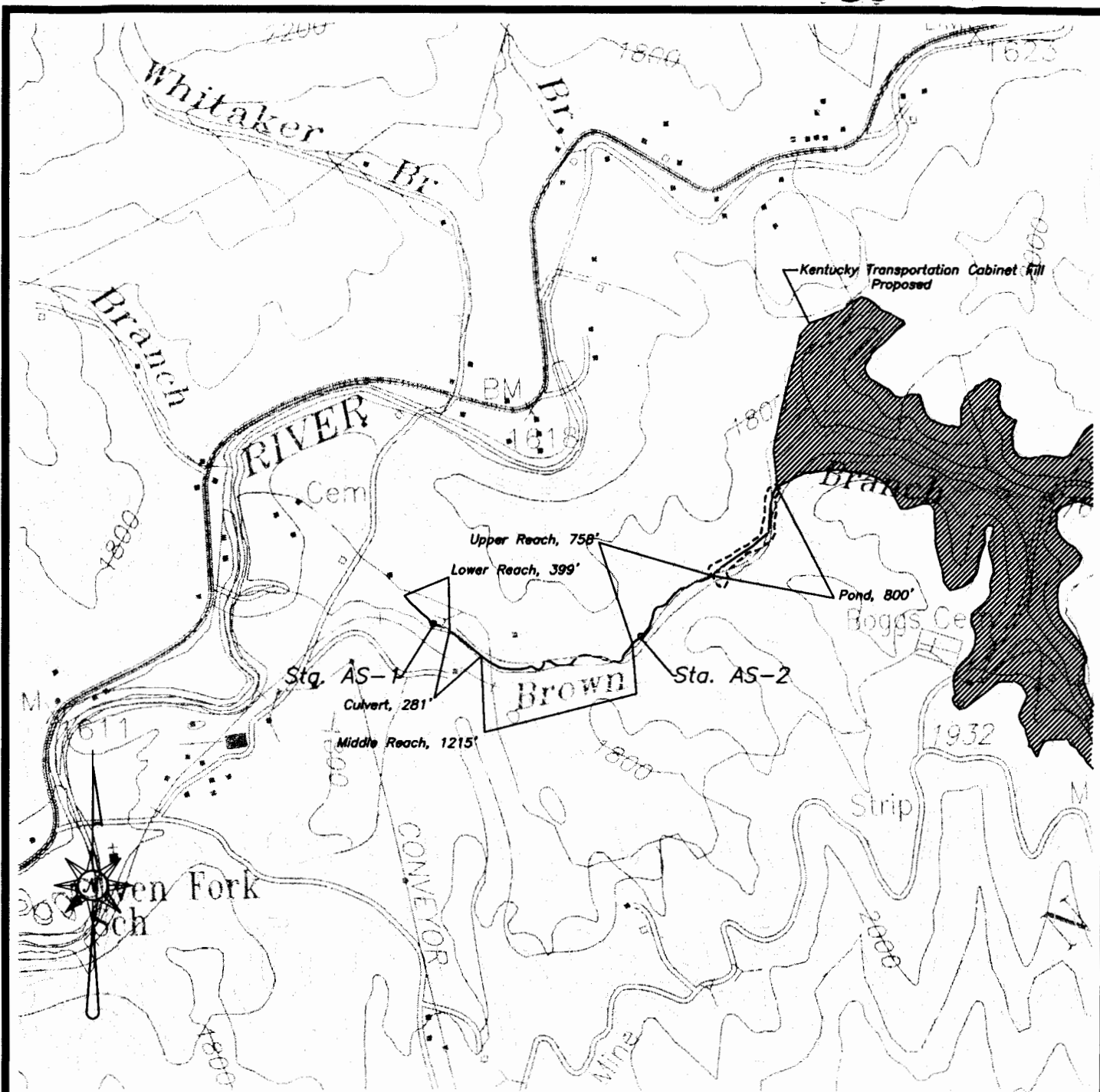
Boggs Cem

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1679

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Perennial Jurisdictional Waters
Permanent Impacts

PN-07-44

F.N. 200602131

CUMBERLAND RIVER COAL COMPANY

KDNR Permit Number 867-9004, Amendment No. 1
Whitesburg Quad.
Brown Branch Surface Mine
Stream Delineation Map

Scale: 1"=1000'

Prepared by

Howard Engineering & Geology, Inc.

SUMMARY OF PROJECT

Size of the project area (Acres)	267.89 Surface, 132.87 Auger
Seams to be mined	Kelly, Imboden
Disturbed acreage within jurisdictional area	Mine-Through with permanent stream relocation, 2.45 Acres (0.92 ac. of stream, 1.53 ac. of existing pond.)
Wetland Impacts	0.0 Acres
Stream Impacts (Permanent ¹)	3,453 linear ft. of Brown Branch
Drainage Control Structures	1 temporary, out-of-stream dugout pond, Pond #6. 1 permanent stream relocation of Brown Branch, DD-1.
Direct Jobs	103
Recoverable Tons of Coal	Approx. 1.76 million

¹Temporary is defined in this section as the duration of time through final bond release (life-of-mine plus five years).

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SUMMARY OF STREAM IMPACTS

Location	Affected Segment Length	Habitat Score	Segment Classification ¹	Ecological Integrity Index (EII)
Brown Branch, Lower Reach	399'	108	P	0.14
Brown Branch, Culvert	281'	67	P	0.10
Brown Branch, Middle Reach	1,215'	108	P	0.14
Brown Branch, Upper Reach	758'	141	P	0.31
Brown Branch, Pond	800'	67	P	0.10
TOTAL	3,453'			

¹ [E = Ephemeral; I = Intermittent; and P = Perennial].

SUMMARY OF ESTIMATED ECOLOGICAL INTEGRITY INDEX INVENTORY FOR PROPOSED MITIGATION

Location	Mitigated Segment Length	Habitat Score at Maturity	Segment Classification	Ecological Integrity Index (EII)
Permanent Diversion, DD-1	4,174 ft.	171	Perennial	0.55

SUMMARY OF EKSAP CALCULATIONS

Location	Affected Segment Length	Mitigation Length Required	Mitigation Length Offered	Balance
Brown Branch, Lower Reach	399'	217'	4174'	3957'
Brown Branch, Culvert	281'	109'	3957'	3848'
Brown Branch, Middle Reach	1,215'	661'	3848'	3187'
Brown Branch, Upper Reach	758'	913'	3187'	2274'
Brown Branch, Pond	800'	311'	2274'	1963'
TOTAL	3,453'			